IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 27119 of 2006(C)

PETITIONER:

SUSEELA S.,
JUNIOR PUBLIC HEALTH NURSE, PHC KODUR,
KODUR P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.T.A.SHAJI
SRI.M.P.GANGADHARAN
SMT.T.V.NEEMA

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.

3. THE DISTRICT MEDICAL OFFICER OF HEALTH,
MANJERI, MALAPPURAM DISTRICT.

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C) No. 27119 OF 2006 C
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Dated this the 14th December, 2006

J U D G M E N T

The petitioner is a Junior Public Health Nurse in the Department of Health Services. She was appointed under Rule 9(a)(i) of the Kerala State and Subordinate Service Rules, on 10-2-1988 as Junior Public Health Nurse. While continuing as a provisional hand, she was selected for appointment by the Public Service Commission and regularly appointed as Junior Public Health Nurse in the same department. The order of appointment was issued prior to 1-10-1994 and she, in fact, had commenced regular service prior to 1-10-1994. The petitioner therefore claimed in terms of Government Decision No. 2 below Rule 33 Part I, K.S.R. that she is entitled to get the benefit of the provisional service also for the limited purpose of increments. The claim was rejected by the District Medical Officer by passing Ext. P5 order stating that while continuing as a provisional hand, the pay scales of Junior Public Health Nurses had undergone revision

and since one of the conditions for the grant of increments taking into account provisional service as well, is that, the post should carry identical time scale of pay.

2. As rightly contended by the learned counsel for the petitioner, the stand taken by the 3rd respondent is directly against the dictum laid down by a Division Bench of this Court in ***Hussain*** v. ***Kerala Water Authority*** {1996 (2) KLT 555}. The Division Bench speaking through K.G. Balakrishnan, J. (as the Hon'ble Judge then was) dealt with an identical issue in relation to the employees of the Kerala Water Authority and has ruled that by the revision of pay scales the identity of the scale of pay will not be lost and that the entire provisional service of the regularised employees should be treated as officiating service and the employees would be entitled to treat the provisional service also for the purpose of increments.

3. The respondents have not filed any counter affidavit. I have heard the Govt. Pleader for the respondents.

4. In the light of the above authoritative

pronouncement which has been considered and relied on in subsequent decisions including ***Jacob*** v. ***State of Kerala*** {1998 (2) KLT 873} and ***State of Kerala*** v. ***Ponnamma*** {2005 (4) KLT 987} the writ petitioner is entitled to succeed. Ext. P5 is set aside. There shall be an order directing the respondents to reckon the provisional service of the petitioner as Junior Public Health Nurse for the limited purpose of increment in terms of Govt. Decision No. 2 below Rule 33 of Part I, K.S.R. The same shall be done within one month on the petitioner producing a copy of the judgment. Monetary benefits due to the petitioner shall be worked out and the amount due disbursed within another two months.

The writ petition is disposed of as above.

K.K. DENESAN
JUDGE

jan/